UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

NEW ENGLAND CONSTRUCTION COMPANY, INC.
Employer[1]

and Case No. 29-RC-11237

LOCAL 52, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA
Petitioner[2]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, a hearing was held before Nancy Reibstein, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.[3]

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1 The Employer's name appears as amended at the hearing. (See Bd. Ex. 2.)

2 The Petitioner's name appears as corrected at the hearing. (See Bd. Ex. 2.)

3 The Employer moved to postpone the hearing and/or Decision because of litigation pending in United States District Court (Eastern District). I hereby take administrative notice of the Court's Memorandum and Order dated September 9, 2005, in Drywall Tapers Local 1974 v. Bovis Lend Lease Interiors et al., 05-CV-2746 (JG), which summarizes the litigation.

For more than 20 years, the United States District Court has supervised a jurisdictional dispute between two union locals -- Local 1974, International Brotherhood of Painters and Allied Trades, and Local 530, Operative Plasters and Cement Masons International Association -- over drywall finishing work at construction jobs in New York City. The jurisdictional dispute is governed by an agreement called the

2. The parties stipulated that New England Construction Co., Inc., herein called the Employer, is a domestic corporation with its sole office and place of business located at 240 Madison Avenue, Garden City Park, New York. It has been engaged in the building and construction industry as a drywall finishing contractor. During the past year, which period represents its annual operations generally, the Employer purchased and received at its New York facility, goods and supplies valued in excess of $50,000 directly from suppliers outside the State of New York.

Based on the parties' stipulation, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert

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New York Plan for the Settlement of Jurisdictional Disputes (the "New York Plan") between the Building Trade Employers' Association ("BTEA") and the Building and Construction Trades Council of Greater New York ("Trades Council"). Describing Local 530 as a "gangster-founded, employer-friendly union local whose leadership had no real interest in advancing the interests of the workers it purportedly represented," the court issued an injunction in December 1990, enjoining Local 530 from asserting jurisdiction over any drywall finishing work in New York City, with a certain exception for "skimcoating." In subsequent years, there were numerous contempt actions against Local 530, and the court concluded, *inter alia*, that Local 530 would "finagle or extort" from general contractors a piece of paper including the word "skimcoat" in order to flout the injunction. On March 17, 2005, U.S. District Judge John Gleeson issued a permanent injunction against Local 530, its officers, agents, servants, employees, attorneys and "all others in active concert or participation with any of them," from asserting jurisdiction over any drywall finishing work in New York City, regardless of whether "skimcoating" is requested or performed. Seven days later, on March 25, 2005, Local 52 (the Petitioner in the instant case) was chartered by the United Brotherhood of Carpenters and Joiners of America. It is not a member of the Trades Council, and therefore apparently not bound by the New York Plan. There seems to be no dispute that a number of the contractors who previously had contracts with Local 530 began assigning drywall finishing work to Local 52. The Employer in this case, New England Construction Company, Inc., voluntarily recognized Local 52 on April 28, 2005 (Bd. Ex. 2). Local 52 now seeks certification from the NLRB. Local 1974 has declined to intervene in the instant proceeding. However, in June 2005, Local 1974 filed a complaint in district court, asking the court to enjoin various employers (construction managers and subcontractors) from assigning any drywall finishing work to any employer who does not have a contract with Local 1974. Judge Gleeson thereafter denied the employers' motion to dismiss, but held Local 1974's request for a preliminary injunction in abeyance until after an evidentiary hearing on September 27, 2005, regarding whether the defendant-employers are bound by the New York Plan.

The Employer herein has asked the Region to postpone further proceedings until the "effects" of the injunctions "may be determined," i.e., how the injunctions may affect the Employer's ability to engage in collective bargaining with any labor organization other than Local 1974 for drywall finishing work.

I hereby affirm the Hearing Officer's decision to proceed with the hearing. Nevertheless, because of the matters pending in federal district court, and the possible conflict that may arise with the outstanding court orders should Local 52 be certified as the collective bargaining representative, I am directing that the ballots be impounded to await further proceedings to clarify the situation.

jurisdiction in this case.

3. The Petitioner, a labor organization, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time mechanic drywall finishers and drywall finisher apprentices employed by the Employer out of its 240 Madison Avenue, Garden City Park, New York facility, but excluding all other employees, clerical employees, guards and supervisors as defined in the Act.

Although there is no dispute that the Employer is engaged in the building and construction industry, the parties stipulated that the eligibility formula in Daniel Construction Co., 133 NLRB 264 (1961), *as modified* 167 NLRB 1078 (1967), will not apply in this case. *See* Steiny and Co., 308 NLRB 1323, 1328 at fn. 16 (1992) (parties are free to stipulate not to use the Daniel formula). Thus, the Board's traditional eligibility standards will be used.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 52, United Brotherhood of Carpenters and Joiners of America. The date, time, and place of the

election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **October 11, 2005.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to

the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 17, 2005.** The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.com.

Dated: October 3, 2005.

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Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201